IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 328 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL MADANLAL PITHAJI

Versus

PATEL DILIPBHAI DHULABHAI

Appearance:

1. Civil Revision Application No. 328 of 2003

MR SL VAISHYA for Petitioner No. 1-3

MR.DEVANG D DAVE for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/03/2004

ORAL JUDGEMENT

RULE. With the consent of the parties matter is taken up for hearing today.

2) The petitioners herein are the original defendants against whom the respondents filed a suit being Special Civil Suit No.8/2002, which is pending in the Court of Civil Judge (S.D.), Vijapur. The said suit is filed to recover certain amount. In the aforesaid suit, on behalf of the defendants an application was preferred before the trial Judge with a request that the defendants may be permitted to file written statement by extending the time for filing the same. In the application, it was stated that the defendants are coming from a distant place and unfortunately since they were not present on the earlier occasion, the Court has closed their right to file written statement. By the impugned order, the learned trial Judge has rejected the said application-Exh.12, by holding that the defendants have not filed their written statement even though more than 90 days have passed. The said order is under challenge in this Civil Revision Application.

3) At the time of hearing of this Civil Revision Application, it is fairly submitted by the learned advocate for the respondents that the respondents have no objection if the petitioners-original defendants are permitted to file written statement, provided they pay adequate costs.

4) In view of the aforesaid concession given by the respondents, as well as considering the fact that the Court has ample power under Section 151 to extend the time for filing written statement, the impugned order of the trial Court is set aside. The petitioners-original defendants are permitted to file written statement before the trial Court on or before 25th March, 2004. If the written statement is filed within the stipulated time, the trial Court shall accept the same and proceed with the suit in accordance with law. Since the original defendants have shown their negligence in filing written statement, the petitioners herein-original defendants are directed to pay cost of Rs.2,000/-, which is to be deposited before the trial Court on or before the aforesaid date, i.e. 25th March, 2004. Mr.Vaishya for the petitioners has assured that the said amount of cost will be deposited within the stipulated time. On such deposit, respondents herein, who are the original plaintiffs of the suit, are permitted to withdraw the said amount unconditionally.

5) Accordingly, this matter is allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(P.B.Majmudar,J.)

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